

MONTANA LEGISLATIVE HISTORY

Chapter 219 19 99

Bill H 76 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) _____ c

1/11 ☒ c

_____ c

_____ c

Date Out 1/13 ☒ c

S. Committee on Judiciary

Hearing Date(s) _____ c

3/9 ☒ c

_____ c

_____ c

out 3/17 ☒

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

By Request of Department of Military Affairs

12/09	Introduced		
12/21	Referred to Appropriations		
1/04	1st Reading		
1/12	Hearing		
1/19	Committee Executive Action--Bill Passed	12	6
1/20	Committee Report--Bill Passed		
1/23	2nd Reading Passed	87	10
1/25	3rd Reading Passed	87	12
	Transmitted to Senate		
1/27	Referred to Finance and Claims		
3/03	Hearing		
3/03	Committee Executive Action--Bill Concurred	18	0
3/03	Committee Report--Bill Concurred		
3/04	2nd Reading Concurred	50	0
3/05	3rd Reading Concurred	50	0
	Returned to House		
3/05	Sent to Enrolling		
3/08	Returned from Enrolling		
3/09	Signed by Speaker		
3/10	Signed by President		
3/10	Transmitted to Governor		
3/15	Signed by Governor		
3/16	Chapter Number Assigned		
	Chapter Number 55		
	Effective Date: 3/15/1999 - All Sections		

HB 76 Introduced by Somerville

LC0666 Drafter: MacMaster

Provide That the Address of a Registered Sexual or Violent Offender Is Public Criminal Justice Information;...

12/11	Introduced		
12/21	Referred to Judiciary		
1/04	1st Reading		
1/11	Hearing		
1/13	Committee Executive Action--Bill Passed	13	6
1/14	Committee Report--Bill Passed		
1/16	2nd Reading Passed	80	19
1/18	3rd Reading Passed	79	20
	Transmitted to Senate		
1/27	Referred to Judiciary		
3/09	Hearing		
3/17	Committee Executive Action--Bill Concurred	5	4
3/17	Committee Report--Bill Concurred		
3/18	2nd Reading Concurred	38	10
3/19	3rd Reading Concurred	36	9
	Returned to House		
3/20	Sent to Enrolling		
3/22	Returned from Enrolling		
3/23	Signed by Speaker		
3/23	Signed by President		
3/24	Transmitted to Governor		

3/31 Signed by Governor
 4/06 Chapter Number Assigned
 Chapter Number 219
 Effective Date: 10/01/1999 - All Sections

HB 77 Introduced by Hurdle *LC0594 Drafter: Higgins*

Impose a Moratorium on the Construction of New Maximum Security and Close-custody Prison Cells;...

12/11	Introduced		
12/21	Referred to Judiciary		
1/04	1st Reading		
1/04	Fiscal Note Requested		
1/04	Fiscal Note Received		
1/09	Fiscal Note Printed		
1/11	Hearing		
1/21	Committee Executive Action--Bill Passed as Amended	16	5
1/22	Committee Report--Bill Passed as Amended		
1/28	2nd Reading Pass Motion Failed	29	71

HB 78 Introduced by Brainard *LC0536 Drafter: Petesch*

Require the Proceeds of State Stipulations, Agreed Settlements, Consent Orders, or Defaults to Be Deposited in the State General Fund;...

12/11	Introduced
12/21	Referred to State Administration
1/04	1st Reading
3/01	Missed Deadline for General Bill Transmittal

HB 79 Introduced by Brainard *LC0282 Drafter: Heffelfinger*

Relate to the Public Employees' Retirement System;...

By Request of Committee on Public Employee Retirement Systems

12/11	Introduced		
12/21	Referred to State Administration		
1/04	1st Reading		
1/04	Fiscal Note Requested		
1/04	Fiscal Note Received		
1/12	Fiscal Note Signed		
1/14	Fiscal Note Printed		
1/14	Hearing		
1/20	Committee Executive Action--Bill Passed as Amended	12	5
1/21	Committee Report--Bill Passed as Amended		
1/30	2nd Reading Passed	61	37
1/30	Rereferred to Appropriations		
2/04	Revised Fiscal Note Requested		
2/04	Revised Fiscal Note Received		
2/06	Revised Fiscal Note Signed		
2/09	Revised Fiscal Note Printed		
2/11	Hearing		
3/09	Committee Executive Action--Bill Passed as Amended	11	7
3/10	Committee Report--Bill Passed as Amended		
3/11	Revised Fiscal Note Requested		
3/11	Revised Fiscal Note Received		

HOUSE BILL NO. 76

INTRODUCED BY SOMERVILLE R

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE ADDRESS OF A REGISTERED SEXUAL OR VIOLENT OFFENDER IS PUBLIC CRIMINAL JUSTICE INFORMATION; ALLOWING A LAW ENFORCEMENT AGENCY TO DISSEMINATE A LEVEL 2 OFFENDER'S EXACT ADDRESS; AND AMENDING SECTION 46-23-508, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender ~~is~~ are public criminal justice information, as defined in 44-5-103; and

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

(i) if an offender was given a level 1 designation under 46-23-509, the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

(ii) if an offender was given a level 2 designation under 46-23-509, the agency with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender's ~~approximate, but not exact, address, such as by stating the neighborhood, town, or part of a county;~~

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offenses for which the offender is required to register under this part; and

1 (E) any conditions imposed by the court upon the offender for the safety of the public; and
2 (iii) if an offender was given a level 3 designation under 46-23-509, the agency shall give the
3 victim and the public notification that includes the information contained in subsection (1)(b)(ii); ~~except~~
4 ~~that the offender's exact address must be included.~~ The agency shall also include the date of the
5 offender's release from confinement or if not confined, the date the offender was sentenced, with a
6 notation that the offender was not confined, and shall include the community in which the offense
7 occurred.

8 (c) Prior to release of information under subsection (1)(b), a law enforcement agency may, in its
9 sole discretion, request an in camera review by a district court of the determination by the law
10 enforcement agency under subsection (1)(b). The court shall review a request under this subsection (1)(c)
11 and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond
12 release of the offender from confinement.

13 (2) The identity of a victim of an offense for which registration is required under this part may
14 not be released by a law enforcement agency without the permission of the victim."

15 - END -

Closing by Sponsor:

Rep. Cobb made closing statements and closed HB 94.
{Tape : 3; Side : A; Approx. Time Counter : 35 - 50}

HEARING ON HB 76

Sponsor:

Rep. Sommerville presented HB 76.
{Tape : 3; Side : A; Approx. Time Counter : 50 - 120}

Proponents:

None

Opponents:

Scott Crichton, ACLU
{Tape : 3; Side : A; Approx. Time Counter : 120 - 225}
EXHIBIT(juh07a1
5)

Informational Testimony:

None

Questions from Committee Members and Responses:
{Tape : 3; Side : A; Approx. Time Counter : 225 - 550}

Closing by Sponsor:

Rep. Sommerville made closing statements
{Tape : 3; Side : B; Approx. Time Counter : 0 - 20}

Chairman Robert Clark inquired of committee members regarding taking executive action today on HB 27, Hb 42, HB 48, HB 81, HB 84. Rep. Gallus HB 42 needed an amendment so no action was taken.

EXECUTIVE ACTION ON HB 27

EXECUTIVE ACTION ON HB 76

Motion/Vote: Rep. Younkin moved that HB 76 be **PASSED**. Motion carried 13-6 with Facey, Gallus, Gutsche, Hurdle, Williams, and Wyatt voting no.

{Tape : 4; Side : A; Approx. Time Counter : 90 - 550}

EXHIBIT(5)

Chairman Robert Clark adjourned the meeting.

Closing by Sponsor:

REP. MCCULLOUGH summarized that this changes how the information is maintained and not what information is maintained.

HEARING ON HB 76

Sponsor: REP. ROGER SOMERVILLE, HD 78, Kalispell

Proponents: Mike Voeller, Lee Newspapers and the Montana Newspaper Association

Opponents: Scott Crichton, American Civil Liberties Union

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, Kalispell, commented that one of his constituents explained to him that she had heard that a sex offender had moved into her neighborhood. To track down the information, she went to the sheriff's department and the city police. It was very difficult for her to find this information. Her children are one and four years old and like to play outside.

He visited with the sheriff, a detective from the police department, and the county attorney regarding the system for tracking and releasing the names of violent sex offenders. The intent of the bill is to make it easier for parents to find out if there is a violent or sexual offender living in the neighborhood.

The state's registration for sexual offenders began in 1989 and for violent offenders in 1995. This was initially handled by the Department of Corrections. After a conviction and before release, the judicial system determines the level of threat that the individual is to society. Level one is low, level two is moderate, and level three is high. The released individual must register within the first ten years after release. If they are convicted a second time, they must register for life. If they change their residence, they have ten days to register with the local law enforcement officials.

In 1997, the registration system was moved to the Department of Justice. They are now collecting registration data from the county sheriffs and the city police departments. Later this summer the department will be providing sexual offender rosters to the counties and cities. Individuals registered in his area include the following: Kalispell - 60, Columbia Falls - 40, and Whitefish - 30.

The actual address is not listed for a level two offender. The name and a photograph are provided. For level three offenders, law enforcement has an obligation to release the name, address, and actual offenses. For level two offenders, the name and approximate location is released. This bill would provide that the actual street address would be released for the level two offender.

REP. SOMERVILLE provided a handout that showed the number of offenders per county in Montana, **EXHIBIT(2)**. Yellowstone County has approximately 280 offenders; Missoula County has over 220 offenders; Cascade County has over 210 offenders; and Lewis and Clark has approximately 80 offenders.

He also provided information currently on the Internet in North Carolina regarding sex offenders, **EXHIBIT(3)**. This provides the name, alias names, address, physical and numeric identifiers, and offenses.

{Tape : 1; Side : A; Approx. Time Counter : 9.39}

Proponents' Testimony:

Mike Voeller, Lee Newspapers and the Montana Newspaper Association, rose in support of the bill from the standpoint of the public's right to know this information and not because the newspapers want to publish the information. That is an individual decision that a newspaper would make similarly to information regarding rape victims.

Opponents' Testimony:

Scott Crichton, American Civil Liberties Union, presented his written testimony, **EXHIBIT(4)**. It is important not to confuse registration requirements with notification requirements. The people who are arrested for sex offenses are not strangers. Ninety-five percent of the people who are arrested for sex offenses are your brothers, uncles, and family friends.

The law that was originally passed was to restrict the rights of these offenders with the judiciary's involvement and the judiciary would determine whether or not an offender is a high, low, or medium risk. After serving five years in prison, the offender should not be exiting the prison with the same level of risk of reoffense as when that person entered. Currently, law enforcement determines notification.

To deal with sex offense in Montana, it is necessary to put the money in the prison system to make sure that there is adequate and competent professional counseling for the offenders who need

it. This is an illness. Persons who remain dry drunks stay that way because they continue to counsel, attend group therapy, and admit and share their problems in a supportive environment. These people can stay dry when they deal with their demons. The same thing can happen with sex offenders.

{Tape : 1; Side : B; Approx. Time Counter : 9.52}

Questions from Committee Members and Responses:

SEN. GRIMES asked the difference between level two and level three offenders. Mr. Crichton urged the committee to request testimony from professionals who are involved in the treatment and designation of sex offenders. He added that **Sandy Heaton** at the Montana State Prison would be very informed.

SEN. GRIMES remarked that he is sympathetic with the situation and believes that there is hope for anyone under the right conditions. This bill is addressing the rights of persons who live in a neighborhood where their children should be able to run up and down the sidewalks and know that their neighborhood is safe. Mr. Crichton agreed that this is a discussion of competing rights. There is a constitutional right that an individual who is convicted of an offense and serves time for the crime, then has their full rights restored. This has been blurred for sex offenders. They are never out from under the shadow of the department. Originally, a sitting judge was the one to make a neutral decision regarding the assessments of the person's risk to society. A 19 year old who served his time and wanted to go home to a small town and live with his parents would result in this person's parents now being targets. This person's ability to integrate into the town where the person's base of support is could be biased by law enforcement's position, especially if they were the ones to prosecute in the first place.

SEN. DOHERTY agreed that the committee needed more clarification regarding the difference between the classes, who made the assessment, and what information was available for each class of offender. **Mike Mahoney, Warden at Montana State Prison,** responded that not everyone coming into the prison is amenable to treatment. The prison is the only residential treatment program for sex offenders. Some offenders refuse to take treatment because they have been advised by legal counsel not to participate. Level 3 offenders would not have participated in the program or the clinicians who run the programs believe the individual has not availed himself to an appropriate level of treatment to reduce their risk factors in returning to the community.

SEN. DOHERTY remarked that if the concern is that individuals have enough knowledge to protect their families, why have classes of offenders. **REP. SOMERVILLE** responded that the intent of the bill was not to change the classification system on sexual offenders. For the level two offender, the address may be released. For a level three offender, the agency shall give public notification. There is still a distinction between the levels.

CHAIRMAN GROSFIELD added that this bill amends Section 508. Section 509 contains information regarding registration. Prior to sentencing a person, the department or a sexual offender evaluator provides the court with an evaluation report and recommends the level. Level one is where the risk of repeat sexual offense is low. Level two has a moderate risk and level three has a high risk factor, there is a threat to public safety, and the evaluator believes the offender is a sexually violent predator. Upon sentencing the defendant, the court reviews the report and designates the offender at the appropriate level. An offender who is designated as level two or level three, can petition the sentencing court to change the designation if the offender is enrolled in and has successfully completed treatment. The court may change the offender's designation if the court finds clear and convincing evidence.

SEN. DOHERTY recounted that for the level two offender, the operative word is that the agency "may" disseminate the information to the public. For the level three offender, the agency "shall" give the information to the public. **Mr. Crichton** questioned the criteria upon which the agency would base its discretionary choice. He believed there would be unequal treatment from one police department to another.

SEN. DOHERTY maintained that the sheriff's office would most likely be very willing to provide this information. **REP. SOMERVILLE** responded that the Department of Justice is implementing a new program that will provide a roster alphabetically by last name or address.

Mike Batista, Department of Justice, explained that they manage the sexual and violent offender registry program. The evaluation form which is presented to the sentencing court provides information regarding prior offenses, whether the offender has shown remorse for the crime, etc.

{Tape : 1; Side : B; Approx. Time Counter : 10:10}

Closing by Sponsor:

REP. SOMERVILLE remarked that another class of individuals who may need to know who is living in the neighborhood is the elderly single woman. He provided a letter he received from Jane Christman, Dutton, in support of this bill, EXHIBIT(5).

HEARING ON HB 53

Sponsor: REP. BOB CLARK, HD 8, Ryegate

Proponents: Mike Mahoney, Warden of the Montana State Prison
Mike Voeller, Lee Newspapers
Betty Waddell, Montana Association of Churches

Opponents: Scott Crichton, American Civil Liberties Union

Opening Statement by Sponsor:

REP. BOB CLARK, HD 8, Ryegate, introduced HB 53. This bill will eliminate the potential last minute appeals for inmates sentenced to death, an ethical dilemma for some physicians, and provide victims the same rights as the condemned to designate witnesses at an execution. This bill provides that a coroner, rather than a physician pronounce death at an execution. Most medical organizations oppose physician participation in executions and consider participation to be unethical. Current law mandates that there be 12 witnesses at an execution, three of whom may be chosen by the condemned. If a condemned individual did not have three people to invite, this would allow for an appeal. The bill allows for three members of the Montana media. One witness would represent the Associated Press. The department would be able to reject selected witnesses if they pose a security risk. For example, a condemned prisoner may want another prisoner to be a witness.

Proponents' Testimony:

Mike Mahoney, Warden of the Montana State Prison, remarked that it is more appropriate to have a coroner involved in the process and this would alleviate the need to have a physician present. This bill also provides authority for the department to identify people who would be inappropriate to be involved as witnesses. A fellow death row inmate may not be an appropriate person to be a witness in a capital case.

{Tape : 1; Side : B; Approx. Time Counter : 10.21}

Ms. Lane added that this would read "A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents and guardian pursuant to a stipulation and order or order of the court."

Vote: The motion carried unanimously - 9-0.

Motion/Vote: SEN. HALLIGAN moved that HB 366 BE CONCURRED IN AS AMENDED. The motion carried unanimously - 9-0.

{Tape : 3; Side : A; Approx. Time Counter : 11.53}

EXECUTIVE ACTION ON HB 593

Ms. Lane explained the amendments, HB059301.avl, EXHIBIT(6). The exception for agreement by the parties went to one subsection. The request was that the exception clause be moved up to the beginning of the subsection.

Motion/Vote: SEN. HALLIGAN moved that HB 593 BE AMENDED. The motion carried unanimously - 9-0.

Motion/Vote: SEN. MCNUTT moved that HB 593 BE CONCURRED IN AS AMENDED. The motion carried unanimously - 8-1.

EXECUTIVE ACTION ON HB 76

Motion: SEN. HOLDEN moved that HB 76 BE CONCURRED IN.

Discussion:

SEN. HOLDEN remarked without the address, it would be difficult to find out if the sex offender was living in the neighborhood.

CHAIRMAN GROSFIELD remarked that the goal is to provide incentive for these people. Based on the presentation from Sandy Heaton, Montana State Prison, there appears to be some success with these people. A level three offender who successfully completes treatment and convinces the judge that they have changed, can have a level three changed to a level two. If the two levels are almost equal, the incentive is taken away.

In the bill, level two uses the word "may" and level three uses the word "shall".

SEN. MCNUTT remarked that there needs to be some substantial changes in attitudes and philosophy to get from a level three status to a level two status.

Vote: The motion carried on roll call vote 5-4 with SENATORS
BARTLETT, HALLIGAN, MCNUTT, and GROSFIELD voting no.